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Agenda item 4

ELABORATION OF BASIC ELEMENTS FOR CONSIDERATION IN FORMULATING PRIVATIZATION PROGRAMMES AND PLANS

Indicative elements for consideration in formulating privatization programmes

Amendments to TD/B/WG.3/14

I. GENERAL CONSIDERATION

A. Meaning of privatization

Para. 2, after structural adjustment insert of the public sector of the economy.

Para. 2, last line: after economic insert and commercial

B. Conditions for success

Para. 5, replace subparagraph (e) by the following:

(e) Establishing a clear but flexible and transparent legal framework for privatization;

C. Privatization strategy

Para. 6, subparagraph (e) after Ensuring insert public

Para.6, subparagraph (m): after strategic enterprises insert and ensuring that privatization procedures provide for fair treatment for potential investors;

II. FORMS OF PRIVATIZATION

A. Non-divestiture options

Para. 7, insert new subparagraph

(c) Joint ventures between public and private enterprises:

Original subparagraph (c) becomes subparagraph (d)

Para. 8, Subparagraph (e): After threat of competition insert including the risk of bankruptcy.

Para. 9, replace the chapeau by the following:

9. A legal definition of an enterprise, together with a financial audit, is required to establish the liabilities and assets of the enterprise. Restructuring is the process of enhancing the value of the enterprise and can take various forms:

Para. 9, add subparagraph (d) Ensuring that the title to the fixed assets of the privatized enterprise is established prior to divestiture.

Paragraph 10, delete existing text

Original paragraph 11 becomes new paragraph 10

Original paragraph 12 becomes new paragraph 11

Add new paragraph 12

12. However, organizational and especially financial restructuring may help to put the public enterprise on a sound financial and commercial footing, whether it is to be divested or not. Together with corporatization, it may help to enhance its sale value when it is to be divested. When governments undertake restructuring they should bear in mind the cost of restructuring.

B. Divestiture options

Para. 14, replace original text by the following

14. Once a political decision has been taken on a sale, it should be carried out according to a schedule and should not be subject to excessive contingencies.

Para. 16, Replace original text by the following

16. Valuations are important in a variety of contexts: initial public offerings, joint ventures, contributions of assets, corporatizations, evaluating bids based on different structures, and negotiated sales. Valuations may also include the valuation of various types of contingent liabilities (guarantees and environmental liabilities). Where there is only one potential buyer there is no substitute for a careful valuation.

Para. 17, after bearish capital market. add Pricing of a share is a prime determinant of whether or not a share issue should be underwritten.

III. FRAMEWORK FOR PRIVATIZATION

A. Supportive environment

Para. 27, Subparagraph (d): Replace original text by the following

(d) Creating conditions in which the local private sector and foreign investors can compete on equal terms.

B. Legal framework and machinery for privatization

Para. 28, Subparagraph (b) for public enterprises read public as well as corporatized enterprises,

Add new subparagraph (e)

(e) Social conditions.

Para. 30, at the end of the paragraph Add The implementing agency should be structured so as to enable it to act independently of vested interests and pressure groups. In order to ensure the transparency of privatization, in particular in the area of the valuation of assets and of the choice of buyers,
the legal framework may provide for the establishment of an independent commission or an ad hoc committee for supervising and/or advising on the sales procedures.

C. Competition and regulation

Para. 34, After However delete where competition is possible

Para. 36, subparagraph (a), after Price insert and price structure

Para. 37, replace subparagraph (f) by the following:

(f) Rationalizing the structures for related industries in order to keep the number of regulatory bodies to a minimum, and ensuring that these bodies have a high technical standard.

Para. 38, replace original text by the following:

38. When privatizing infrastructures, a negotiated contractual concession may be preferable to a general regulation, giving the investor a more predictable framework. Issues such as price or rate of return regulation, and also provisions for monitoring of security and quality of service should be normally included in the contracts.